



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/326,014	06/04/1999	M. FRANCIS BOTTS	MOAR:100-41-	3572

7590 05/14/2004

CHARLES E. DUNLAP
NELSON, MULLINS, RILEY & SCARBOROUGH, LLP
1330 LADY STREET
KEENAN BUILDING, THIRD FLOOR
COLUMBIA, SC 29201

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
----------	--------------

1616

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/326,014	Applicant(s) BOTTS ET AL.	
	Examiner Neil Levy	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 4 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/19/04
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-8, 12-18, 36-38, 40-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-15, 31-35, 37-42, 44-46, 48-50 is/are rejected.
- 7) ☒ Claim(s) 6, 39, 43, 47, 49 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 4, 7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leong et al 5156843 in view of Reuter – EP 0364406.

Leong provides controlled release particles, (summary) of actives, inclusive of fungicides (col. 7, lines 39-41), of 65% of the weight of the polymer matrix (col. 7, lines 50-53) of spherical (bead) shape (Example) Particle size is 10-100 microns (col. 2, lines 56-59). Polymers are of acrylate/ methacrylate (col. 5, lines 30-45) with povogens, the instant plasticizers, and dispersants, surfactants (col. 3, lines 11-33, 66-17).

Suspensions, or powders-granules are produced. The preparation does not lend itself to identification of even distribution, or of predictable concentration gradient dispersion. Neither is the actives specifically identified. However, Recites shows the instant line 43-48 fungicides, dust free for dyestuff and pharmaceutical and other uses.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize controlled compositions to use of Leong modified with DAO Fungicide, in order to have products with fungi and bacterial contamination. Reuter shows the fungicides able to be used with safety.

It has not clearly been established by objective showing of some unobvious and/or unexpected results that administration of the particular form of active, carrier, or the particular Locus to be treated provides any greater level of prior art expectation as claimed. Further, applicant has showed no criticality as to the ingredient actives concentrations, ratios or Application.

The selection of each ingredient and form thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredients to optimize the effects desired, and the use ingredients for the functionality for which they are known to be used is not a basis for patentability.

Claims 1, 3, 5, 7, 8, 12-18, 36-38, 41, 43, 45, 46, 48, 50 are rejected under 35 U.S.C. 102(e) as being anticipated by 5719103 (DAO *dal*)

The rejection of record is maintained. See example 1 13.89 to 32.28 of Tebuconazole to polymer, with added plasticizer and wetting agent adjuvant. These are powders thus seen as meeting the instant shape generally, and size (col. 6, lines 51-10-100 micron). Although the words :dispersed in a polymer matrix are not seen, the components are all present, as a powder considered as they same thing since there is no indication otherwise. There is no Layering of ingredients, for instance. The ingredients are seen as intermingled.

Claims 1, 3-5, 7, 8, 12-18, 36-38, 40, 41, 43-46, 48, 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over DAO ^{DAO in view of Reuter EP 0364406} (above) provides the instant polymeric matrix fungicide, but not all of the instant fungicides as claimed are mentioned, to treat plastic. Reuter shows alternative and equivalent Triazoles, to Tebuconazole, a DAO fungicide.

These include the instant Triazoles, shows at p. 2 col. 2, line 42-46. One of ordinary skill in the art at the time of the instant invention would have found it obvious to include any of Reuters Triazoles in the advantageous powder preparations of DAO, as both are directed to improved handling of pesticidal fungicides.

Applicant's arguments filed on 2/10/04 have been fully considered but they are not persuasive. Applicant's arguments and amendments have resulted in withdrawal of 112 and reconsideration, But we still see the invention as claimed obvious and anticipated, as indicated at rejections maintained and newly instituted.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/LR
May 3, 2004



NEIL S. LEVY
PRIMARY EXAMINER